

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

SUNRISE FIBERGLASS ENGINEERING,)

Appellant,)

v.)

STATE OF WASHINGTON, DEPARTMENT
OF ECOLOGY,)

Respondent.)

PCHB No. 89-117

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Sunrise Fiberglass Engineering, Inc. ("Sunrise") appealed the Department of Ecology's Order No. DE 89-S117 and Notice of Penalty Incurred and Due Order No. DE 89-S124 (\$16,000), which allege violations of the hazardous waste laws.

The hearing on the merits was held on May 9 and 25, 1990 in Lacey, Washington. Present for the Board were Chair Judith A. Bendor, presiding; Members Wick Dufford and Harold S. Zimmerman. Appellant Sunrise was represented by Attorney Robert W. Johnson (Heuston & Settle, Shelton). Respondent Department of Ecology ("DOE") was represented by Assistant Attorney General Jeffrey S. Myers. Court Reporters Donna K. Woods and Cheri L. Davidson recorded the proceedings.

The Board heard sworn testimony, reviewed exhibits, and heard counsel's argument. Having conferred, the Board makes these:

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(1)

1 FINDINGS OF FACT

2 I

3 Sunrise is a company which makes fiberglass greenhouses. Mr.
4 Clark Harmon is the president and owner of the company. He started
5 the business in 1982. Sunrise is (and was on April 1989) located at
6 the Sanderson Field Industrial Park in Mason County. At the present
7 time it employs 25 people. In its manufacturing process Sunrise uses
8 chemicals, including resins containing styrene. Acetone is also used
9 as a solvent for cleaning..

10 II

11 On March 29, 1989, in response to an anonymous complaint about
12 hazardous waste dumping, two DOE employees inspected the facility with
13 Mr. Harmon.

14 After assembling in the reception area, the group entered the
15 spray room where the greenhouses are manufactured. In a dumpster, a
16 pail was found with a plastic bag. Inside the bag was pale, pinkish,
17 viscous material, about 3 1/2 gallons of it. The material was not
18 catalyzed.

19 DOE wanted to photograph the dumpster and the pail, but Mr.
20 Harmon refused permission, claiming proprietary protection. DOE took
21 a sample of the material, labeled it and put in a cooler. Later
22 chemical tests revealed that the material was a resin containing
23 volatile organics, including 7.3% styrene and 2.2% acetone.

1 While the inspection was being conducted, the dumpster was
2 emptied into a truck and its contents taken to a solid waste landfill
3 in Mason County. The dumpster is emptied three times per week.

4 III

5 The inspection continued into Sunrise's yard, where there were
6 three fiberglass storage sheds. The yard was a mess, with a variety
7 of used barrels with unknown contents, without labels, set amidst
8 debris.

9 Inside the sheds there were several 55 gallon barrels of waste
10 acetone, most of which were full. Several of the barrels had open
11 "bung" holes and acetone was evaporating into the air. None of these
12 waste acetone barrels had labels containing the name of the material,
13 waste code, accumulation date, or the words "hazardous" or "dangerous
14 waste". Some of the barrels were partially corroded and slightly
15 dented.

16 In the yard there were several more waste acetone barrels, most
17 were full. Some were missing bung holes and none was labeled.

18 Harmon identified considerably more than 11 barrels as containing
19 waste acetone. In fact, we are not convinced that Harmon really knew
20 what was in each barrel. Prior to the inspection he had not been in
21 the yard area for several months.

22 Sunrise did not have written instructions for the employees on
23 handling dangerous wastes.

1 From all the evidence we find that there were at least 11 full
2 barrels of waste acetone.

3 IV

4 A full 55 gallon barrel contains 365 pounds of waste acetone.
5 Thus, there were at least 4,015 pounds of waste acetone on-site that
6 day.

7 Sunrise had been accumulating waste acetone since at least 1985.
8 At least five of the waste acetone barrels had been on-site since
9 April 1, 1987, about two years. Eight had been on site since the
10 previous fall. (See Findings of Fact X and XV, below).

11 V

12 The material found in the dumpster was 7.7% styrene, uncatalyzed
13 resin. At this concentration, the material was extremely hazardous
14 waste. WAC 173-303-103(2)(b)(i). Polyester resin with 48% styrene
15 has a flash point of 88-92 degrees farenheit, and is highly
16 flammable. Exposure can cause drowsiness.

17 VII

18 Acetone is a listed dangerous waste under in the state
19 regulations. WAC 173-303-9904 at F003. It can irritate peoples'
20 eyes, nose, throat, cause dizziness and skin problems. It is listed
21 in the NIOSH Pocket Guide to Chemical Hazards.

22 VIII

23 After concluding the March 29, 1989 inspection, DOE met with Mr.
24

1 Harmon and explained the violations they had observed. They indicated
2 a penalty was being considered.

3 On July 19, 1989 DOE issued Notice of Penalty Incurred and Due
4 No. DE 89-S124 ("penalty order"), assessing a \$16,000 penalty based on
5 the March 29, 1989 inspection. DOE also issued Order No. DE 89-S117
6 requiring Sunrise to take corrective action.

7 Sunrise appealed the orders to this Board. The appeal became our
8 PCHB 89-117.

9 IX

10 In brief, the penalty order alleged the following violations:

11 *Storage of 20 drums of spent acetone, a listed*
12 *dangerous waste, for more than 90 days at Sunrise.*
13 *WAC 173-303-200(1);*

14 *Operating a storage facility without a permit. WAC*
15 *173-303-280 through -395;*

16 *Failing to secure stored dangerous waste containers.*
17 *WAC 173-303-630(5)(a) and (b);*

18 *Failing to properly label containers. WAC*
19 *173-303-200(1)(c);*

20 *Providing false or inaccurate information on*
21 *certification (Form 4) regarding the amount of*
22 *dangerous waste stored at Sunrise; WAC 173-303-220(1);*

23 *Disposal of a dangerous waste in the dumpster for*
24 *final disposition in a county landfill. WAC*
25 *173-303-141;*

26 DOE concluded that all the violations were either serious or critical.

X

To understand the penalty order, additional background is necessary.

On April 1, 1987, DOE conducted its first dangerous waste inspection of Sunrise facility. The inspection was undertaken in response to a complaint. Mr. Harmon was not present, but an employee accompanied the inspectors. Five to six 55 gallon barrels of waste acetone, each more than half-full, were found on-site. The barrels were in fair condition, showing some signs of rust. The bungs were not securely closed and acetone could be smelled. The odor was particularly strong because the barrels were stored inside fiberglass sheds. The barrels were not labeled.

On April 22, 1987 the Department sent Harmon a follow-up letter, alerting him to the barrels and citing violations of WAC 173-303-200(1)(a)-(e) and -630(3)(5)(a), (7)(a) and (e). The letter stated in part:

The violations identified during Ecology's inspection must be corrected immediately. Sunrise Fiberglass Engineering is a fully regulated generator of dangerous waste and must comply with all the generator provisions of Chapter 173-303 WAC.

Ecology appreciates your attention to these matters. If you have any questions and/or comments, please telephone me at [...]. [Exh. R-35; emphasis added.]

1 A copy of the regulations were provided, with the cited portions
2 highlighted. A copy of the reporting form and certificate of compliance
3 were provided.

4 DOE did not issue a penalty.

5 XI

6 On May 15, 1987 Harmon completed the certificate and sent it to
7 DOE. In the certificate he stated he had complied with the accumulation
8 provisions of WAC 173-303-200 and -630.

9 At the same time Harmon submitted a Form 2, Notification of
10 Dangerous Waste Activities, and obtained an identification number. On
11 this form he estimated annual generation of 400 pounds of acetone.

12 XII

13 Some time in 1987-1988, after receiving the DOE follow-up letter,
14 Harmon contacted several vendors to remove the barrels. They were
15 apparently not interested in the job or Harmon found the estimate too
16 costly. Harmon did not make further efforts to remedy the waste
17 problem. Instead, he devoted his time and energy to establishing and
18 expanding his business in a competitive industry.

19 XIII

20 In May 1988 Harmon submitted a 1987 Generator Annual Dangerous Waste
21 Report ("Generator Report"; Form 4) stating Sunrise had 2,178 pounds of
22 acetone on-site.

23 XIV

24 In October 1988 DOE conducted another inspection. Sunrise stated
25

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1 that they were in the process of removing existing dangerous waste
2 barrels off-site, and said that they had periodically been removed.
3 However, Sunrise did not produce any dangerous waste transport manifests
4 for DOE's inspection.

5 In a dumpster uncatalyzed resin was found, which was dripping onto
6 the production floor. After taking one photograph, the inspector was
7 told that if he took any more, the inspection would be terminated.

8 XV

9 In the yard and sheds there were eight 55 gallon barrels containing
10 waste acetone, each one half to three-quarters full. At least five
11 appeared to be the same barrels that were there in April 1987. The
12 barrels were not labeled.

13 Prior to leaving the inspector met with Harmon and discussed the
14 violations. No follow-up letter was sent. The DOE inspector had
15 subsequently received a new job assignment. While the inspector had
16 intended to have enforcement action taken, this did not occur because of
17 the personnel changes.

18 After this inspection, Harmon contacted some vendors to remove the
19 barrels. He decided the cost was too high. One quote was \$100 to \$150
20 per barrel. Another estimate was \$4500 to remove and do testing on 13
21 barrels, including ones with resin, oil and fiberglass wastes.

22 Harmon did nothing further to correct the deficiencies outlined in
23 the October 1988 inspection.

1 XVI

2 On March 14, 1989 Harmon submitted a 1988 Generator Report stating
3 that he had 2,541 pounds of spent acetone on-site as of December 31, 1988

4 On March 31 an inspection occurred (as previously described), and
5 the penalties were issued on July 19, 1989.

6 XVII

7 A written manual for handling hazardous waste was not developed
8 until the fall of 1989.

9 Revised Generator Reports (Form 4 for 1987 and 1988) were not filed
10 until October 1989.

11 Full compliance was not attained until November 27, 1990, more than
12 four months after the penalty and enforcement orders issued. By then,
13 all the waste acetone was removed.

14 XVIII

15 We find, from all the facts and circumstances, that it is more
16 probable than not, that Sunrise put the uncatalyzed styrene resin in the
17 dumpster that DOE found on March 29, 1989. Had this resin not been
18 fortuitously discovered, it would have ended up in the Mason County
19 landfill.

20 XIX

21 Any Conclusion of Law which is deemed a Finding of Fact is hereby
22 adopted as such.

23 From these Findings of Fact, the Board reaches the following:
24
25

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1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these parties and the subject
4 matter. Chapt. 70.105 RCW.

5 II

6 It is unlawful to dispose of extremely hazardous waste, the
7 uncatalyzed styrene resin, by placing it in a dumpster, co-mingled with
8 garbage, for disposal at a solid waste landfill that is not a permitted
9 TSD facility. WAC 173-303-141 was violated.

10 III

11 Sunrise is clearly a generator of solid waste, producing more than
12 400 pounds of waste acetone, alone, yearly. Upon accumulating more than
13 220 pounds per year, Sunrise became subject to all the requirements of
14 Chapt. 173-303 WAC. WAC 173-303-070(8)(a). Sunrise did not have a
15 permit to accumulate dangerous waste. Sunrise violated WAC 173-303-280
16 through -395, by operating a storage facility without a permit. Absent a
17 permit, Sunrise could not lawfully accumulate dangerous waste on-site for
18 more than 90 days. WAC 173-303-200(1). Sunrise actually accumulated
19 these wastes for years.

20 These are serious violations, thwarting the basic regulatory
21 framework for dangerous waste facilities. In fact, Sunrise's method of
22 storing and handling these dangerous wastes was in complete disarray for
23 years.

1 IV

2 Appellant concedes that Sunrise violated the dangerous waste
3 labeling requirements of WAC 173-303-200(1)(c). This is a serious
4 violation. Without proper labels employees, fire fighters and other
5 emergency response personnel, waste transporters, and others do not know
6 how to handle this dangerous waste. Proper labeling is an essential
7 element in regulating and handling dangerous waste.

8 V

9 Some of the acetone barrels were open, clearly violating WAC
10 173-303-630(5)(a) and (b). This is a serious violation. The open
11 barrels released acetone into the environment. In the confined
12 greenhouses, the released chemicals posed a heightened risk to workers.

13 VI

14 We conclude that the 1988 Generator report filed on March 14, 1989,
15 stating that on December 31, 1988 there were 2,541 pounds of spent
16 acetone were on-site, was inaccurate. Only three months later there were
17 at least 4,015 pounds on-site. Harmon provided several estimates of the
18 rate of waste generation. Under any estimate, 1600 pounds of waste
19 acetone would not have been generated in 4 months. WAC 173-303-220(1)
20 was violated.

21 Because we conclude, solely based on the acetone, that this section
22 was violated, we do not explore the issue of whether there were
23 violations based on the storing, labeling, and reporting of uncatalyzed
24

1 resin. (Disposal of the resin in the dumpster is a separate legal issue.)

2 VII

3 Liability has been found for all those provisions DOE has alleged.
4 The enforcement order, DE DE-S117, is lawful.

5 VIII

6 We now address the appropriateness of the \$16,000 penalty.

7 The purpose of civil penalties is to promote compliance. Sunrise
8 had ample warning over several years that it was violating the law. Its
9 efforts to correct the problems were desultory. Clearly Sunrise did not
10 consider the proper handling of dangerous waste to be an integral part of
11 its business operations. Only after the issuance of the penalty, several
12 months later to be exact, did Sunrise expend the necessary time, energy
13 and money to come into compliance.

14 Appellant argues that DOE did not provide adequate guidance to
15 assist him. We are aware that over the years DOE has developed a more
16 extensive program to educate and assist businesses in complying with
17 these complex regulations. This is a salutary trend.

18 However, Sunrise's failure to comply demonstrates a complete
19 disregard for basic regulatory provisions, ones not hard to understand.
20 Sunrise placed its priorities elsewhere.

21 The \$16,000 penalty was far less than the maximum, which by statute
22 is \$10,000 per day per violation.

23 We conclude that the penalty was eminently reasonable.

IX

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following:

ORDER

Orders DE 89-S117 and DE 89-S124, (\$16,000) are AFFIRMED.

DONE this 26th day of June, 1990.

POLLUTION CONTROL HEARINGS BOARD

Judith A. Bendor
JUDITH A. BENDOR, Presiding

Wick Dufford
WICK DUFFORD, Member

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

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